

FILED

MAY 29 2020

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

PHILADELPHIA INDEMNITY
INSURANCE COMPANY, a
Pennsylvania Corporation,

Plaintiff,

vs.

OUTBACK CONSTRUCTION, INC.,
a Montana Corporation,

Defendant.

CV 20-4-M-DLC-KLD

ORDER

On May 7, 2020, United Magistrate Judge Kathleen L. DeSoto entered her Findings and Recommendation on the Motion for Default Judgment of Plaintiff Philadelphia Indemnity Insurance Company ("Philadelphia"). (Doc. 30.) Judge DeSoto recommends that the Court grant the motion, enter judgment against Defendant Outback Construction, Inc. ("Outback"), and award damages, legal costs, and interest to Philadelphia. No party timely objected to the Findings and Recommendation, and accordingly all parties have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v.*

Arn, 474 U.S. 140, 149–53 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been made.” *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

Having reviewed the Findings and Recommendation (Doc. 30), the Court finds no clear error. Default judgment is appropriate given Outback’s failure to appear in this matter. Fed. R. Civ. P. 55(b)(2). Judge DeSoto did not clearly err in her application of the seven-factor test set forth in *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986), and the Court agrees that it should exercise its discretion to grant default judgment under the circumstances. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Additionally, Judge DeSoto reviewed evidence regarding the measure of Philadelphia’s damages, and she did not clearly err in her calculations.

Accordingly, IT IS ORDERED:

(1) Judge DeSoto’s Findings and Recommendation (Doc. 30) is ADOPTED IN FULL;

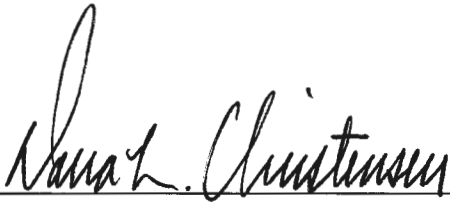
(2) Philadelphia Indemnity Insurance Company’s Motion for Default Judgment is GRANTED;

(3) The Clerk of Court shall enter judgment in favor of Philadelphia Indemnity Insurance Company and against Outback Construction in the following amounts:

- (a) \$748,887.39 for payments made for claims on the bond;
- (b) \$5,857.70 for legal costs and expenses incurred;
- (c) \$22,465.94 for prejudgment interest accrued in 2019;
- (d) prejudgment interest accrued in 2020 at a rate of 10% per annum
until judgment is entered; plus
- (e) interest at the contractual rate of 10% until the judgment is
satisfied; and

(4) Philadelphia Indemnity Insurance Company's Motion for Summary
Judgment (Doc. 16) is DENIED as moot.

DATED this 29th day of May, 2020.



Dana L. Christensen, District Judge
United States District Court